
Onlangse regspraak/Recent case law

Cecil Sher and Another v Vermaak (AR 197/13) [2014] ZAKZPHC 8 (25 February 2014)

Ensuring consistency in the law of defamation

1 Introduction

A person's *fama* or good name is the respect and status he enjoys in society (see Neethling, Potgieter & Visser *Law of Personality* (2005) 129). A person's right to his good name or *fama* is recognised and protected as an independent personality right (see Neethling & Potgieter *Law of Delict* (2015) 351). Personality law deals with the legal norms (rules and principles) aimed at protecting an individual's (or a juristic person's) personality, including the rules and principles which deal with the recognition, definition and protection of the various personality rights (see, in general, Neethling *et al supra*). It is trite law that defamation is the wrongful, intentional publication of words or behaviour concerning another person which has the effect of injuring his or her status, good name or reputation (see Neethling & Potgieter 352). Although some individuals are more easily insulted or offended than others, it is not the subjective feeling of being injured that entitles a person to a claim based on defamation. This makes it more difficult in a sense because it is the objective evaluation of the wrongfulness of the infringement that needs to be considered by a court. Although the law of defamation is clear and has developed over a long period of time (Neethling *et al* 12-16), case law sometimes creates the perception that legal principles are not applied consistently. The question of whether the reputation of the person concerned has been infringed is a factual one, based on whether the reasonable person sees it as such (Neethling & Potgieter 354).

The issue of factual infringement of the reputation of a person is particularly evident from the recent decision in *Cecil Sher and Another v Vermaak* ((AR 197/13) [2014] ZAKZPHC 8 (25 February 2014)). The purpose of this case discussion is to evaluate the way in which the court applied the existing principles pertaining to defamation and to indicate how the court, on appeal, reversed the rather strange findings of the court *a quo*. The discussion of the facts below shows that the dispute between Sher and Vermaak is typical of a situation where relations between parties have soured and they deemed it necessary to verbalise their dislike and, in the process, involve individuals who have no interest in what is essentially a petty squabble. However, court cases do not

concern themselves with social phenomena or group dynamics. Rather, it is the role of the courts to establish whether the behaviour of individuals such as Sher and Spencer, in fact, infringed a legally recognised right such as the right to a good name and, similarly, whether defences or grounds of justification were present or not. Whether or not the court did that *in casu* becomes evident from the discussion that follows.

2 The Judgments

2 1 Facts of the Case

Mr William Vermaak (the plaintiff in the court *a quo*) instituted an action against Mr Cecil Sher and Ms Lorraine Spencer (the defendants in the court *a quo*) in which he claimed payment of the sum of R150 000 on the basis that the defendants had defamed him (*Sher and Another v Vermaak* par 1 of appeal judgement).

The incident in question stemmed from Vermaak's expulsion from the Stella Athletic Club. Vermaak, Sher and Spencer were all members of the club at that time (par 2). Trouble started when Sher wrote a letter to Vermaak which letter was subsequently distributed by Spencer. This letter, which was distributed to all the members of the club, contained a number of statements, *inter alia*, that there were various complaints about Vermaak, his behavior was unbecoming of a gentleman and he allegedly brought the club into disrepute (par 3). Following this correspondence, Vermaak attended a disciplinary hearing. In accordance with the findings, he was asked to resign and he was also informed that should he refuse to resign, he would be expelled (par 3 of appeal judgement). Predictably, Vermaak was in fact expelled and he formed a new club, the KZN Striders (par 3 of appeal judgement).

Not one to let sleeping dogs lie, Vermaak opted to institute a claim against his former fellow club members based on defamation. He contended that the letter in question was *per se* defamatory and that it had a 'distinctive defamatory sting' (par 4 of appeal judgement). In support of this, the particulars of claim set out a number of averments (par 4 of appeal judgement). First, Vermaak claimed that Sher and Spencer stated that, 'to [their] knowledge, William Vermaak is the first person to have been expelled by Stella Athletic Club' (par 4(a) of appeal judgement). These words, according to Vermaak, were specifically intended to isolate him and reiterate the point that Vermaak was the 'only person in the history of the club to have been adjudged so unworthy as to warrant expulsion' (par 4(a) of appeal judgement).

Second, Vermaak pleaded that the words in question, namely, that the plaintiff 'acted in an overbearing, presumptuous and aggressively haughty manner', were defamatory (par 4(b) of appeal judgement). The plaintiff deducts this from the words used in the letter, namely, that Vermaak was arrogant in telling the club that their constitution was 'old,

invalid and superceded by the National Constitution' (par 4(b) of appeal judgement).

In the third instance, Vermaak pleaded that Sher and Spencer used words that suggested that the plaintiff had such an 'odious' reputation that no other club in Durban or its surrounds would admit him as a member (par 4(c) of appeal judgement). In addition, Vermaak averred that the allegation that he had 'poached and canvassed' some members was intended to paint the picture that the plaintiff recruited new members for his club in an unfair and unsportsmanlike way (par 4(d) of appeal judgement).

Furthermore, Vermaak averred that the allegations by Sher and Spencer that he exploited the Stella Sports Club 'to nourish his own ego and advance his own objectives' (par 4(e) of appeal judgement) were defamatory, because it creates the impression that Vermaak was unworthy of membership and that he will continue to 'engage in future socially unacceptable behaviour to the detriment of runners, motorists and pedestrians' (par 4(f)(ii) of appeal judgement).

Not surprisingly, Sher and Spencer denied that the statements made by them were wrongful and made with the intent to injure the respondent's reputation, as their statements could in fact be justified. More specifically they pleaded that their statements were in essence true and what was more, is that the publication thereof was in the interest of the members of the athletic section of the club. Overall, having regard to Vermaak's behaviour at the disciplinary hearing, the surrounding circumstances support their defence based on fair comment and truthfulness (par 5 of appeal judgement).

2 2 Judgment of the Court *a Quo*

Mokgohloa J found in Vermaak's favour and ordered Sher and Spencer, jointly and severally, to pay Vermaak a sum of R50 000 together with the costs of the action (par 15 of *a quo* judgment).

In what can only be described as a disappointing and unscientific approach, Mokgohloa J seemingly deals with the defence of truth and public interest as a ground of justification by ruling, in her view, that the letter written by Sher and Spencer contained defamatory matter because it injured the plaintiff's reputation or lowered the plaintiff's status in the eyes of the members of the Stella Club (par 7 of appeal judgement). Instead of applying the law in a systematic way, the judge jumped into the boxing ring and commented that Sher and Spencer failed to show that Vermaak acted in an arrogant manner. In addition, the judge commented as follows: '[The] appellants (Sher and Spencer) did not deny that the respondent had enjoyed success with the training of his elite squad and that his manner of training benefited the group' (par 6 of appeal judgement & 15 of *a quo* judgment). Therefore, it would be understandable that when he started his own club, most runners would decide to join him. The judge further stated that it therefore cannot be

said that he poached members to join his 'club' (par 7 of appeal judgement).

Unfortunately, the judge failed to set out the law in a satisfactory manner and to deal properly with the averments in the particulars of claim. The conduct of the judge can almost be likened to an irritated teacher who enters a sandpit with two fighting children and upon hearing the last bit of the argument, punishes one of the children at random without enquiring about the context or about the circumstances surrounding the fight. The remainder of the averments were not dealt with by the judge of the court *a quo* (par 8 of appeal judgement).

2 3 Preliminary Remarks

Instead of entering the fray as a party to a tug of war, a judge must consider the proven facts, apply the law and reach a decision. We need to remind ourselves that Vermaak had to prove that the poison-pen letter from Sher, and Spencer's distribution thereof, constituted defamation because it constituted the wrongful and intentional publication of words that had the effect of injuring his status, good name or reputation (see Neethling & Potgieter 352). Publication is the disclosure of the defamatory statement or behaviour to a third person (see Neethling & Potgieter 353; and *Lubbe v Robinsky* 1923 CPD 110 111). In this particular case, publication was clearly not an issue. Apart from publication, the court needed to consider the wrongful, intentional publication of words or behaviour concerning another person which has the effect of injuring that person's status, good name or reputation (see Neethling & Potgieter 352). Vermaak had to prove that the words were wrongful by showing that in the eyes of the 'reasonable person with normal intelligence and development, the reputation of the person concerned has been injured (thus also an objective approach)' (Neethling & Potgieter 354). It is also very important to remember that the defamation complained of must have the effect of reducing the injured person's status in the community. Therefore, it is possible that the injured person may feel aggrieved by such statements. This is not a requirement for defamation, but rather a possible consequence which may follow. The statements made about him must have had the effect of lowering his status in the eyes of the community (Neethling & Potgieter 354). This test is clearly objective. As has been said, the judge did not consider all the elements of defamation and seemingly just picked a side (par 8).

Wrongfulness in the context of defamation is a complicated matter. The test for wrongfulness in these cases is based on the reasonable person test. This test states that whether, in the opinion of the reasonable person with normal intelligence and development, the reputation of the plaintiff has been injured. It cannot be avoided in the way Mokgohloa J did in this particular case. Rather, a judge should apply the test for wrongfulness based on the reasonable person test. Although there is no doubt that the application of the reasonable person test is complicated,

there are a number of factors which must be taken into account. First, the judge should have considered that the reasonable person is a fictional, normal, well-balanced and right-thinking person who is neither hypercritical nor oversensitive. The judge should look at whether such a person would find a statement to injure a person's reputation or not (see Neethling & Potgieter 355-356). Second, this reasonable person is someone who subscribes to the norms and values of the Constitution. This person is very much aware of the principles of the Constitution and would use these principles as underlying values to judge situations (Neethling & Potgieter 355). Third, he is a member of society in general and not only of a certain group. Therefore, the statement concerned would offend or harm all persons in society and not just those of one specific group (Neethling & Potgieter 355). Fourth, the reaction of the reasonable person is dependent on the circumstances of the particular case. The manner in which it is conveyed of each publicised statement should be looked at separately as this would affect the reaction of the reasonable person (Neethling & Potgieter 356). Fifth, verbal abuse is in most cases not defamatory because it does not normally have the effect of injuring a person's good name. Therefore, even a statement that amounts to verbal abuse, may not necessarily amount to defamation (Neethling & Potgieter 356). The sixth point is that words can *prima facie*, or according to their primary meaning, be defamatory but words can also be defamatory according to their secondary meaning. In such a case, the plaintiff would have to prove that the secondary meaning (or innuendo) is defamatory (Neethling & Potgieter 356). The last point to be taken into consideration is that if words have an ambiguous meaning, the one defamatory and the other not, then the meaning most favourable to the defendant must be followed. It is submitted that *in casu*, the judge in the court *a quo* did not analyse the specific element of wrongfulness in sufficient detail. The learned judge did not ask the question of whether a reasonable person with normal intelligence and development, would have found the person's reputation to have been injured (par 6).

If the judge in the court *a quo* had dealt with wrongfulness as an element of defamation in detail, she may have come to the same conclusion as the appeal court where it was said by Ploos van Amstel J that he 'was not convinced that a reasonable reader would find this statement to be defamatory, if objectively scrutinised' (par 26).

Also, even if the judge in the court *a quo* had found that *prima facie* wrongfulness was proven (Neethling & Potgieter 357), it must be remembered that Sher and Spencer had in fact relied on the defences of truth and public interest for the use of their 'defamatory' statements. They raised the defences that their statements were true and that the publication thereof was in the best interests of the club and the other members of the club. These factors are grounds of justification and should have been dealt with by the judge in the court *a quo* (see Neethling & Potgieter 357).

The plaintiff who proves that the publication is defamatory and that it refers to him, provides only *prima facie* proof of wrongfulness (see Neethling & Potgieter 357). A presumption of wrongfulness then arises, which places the onus on the defendant to rebut it (Neethling & Potgieter 357). If a defendant can prove that a statement made by him or her is justified according to a relevant defence, then the defendant can escape liability based on a ground of justification for example, privilege, truth and public interest, and fair comment (see Neethling & Potgieter 357). The most relevant grounds of justification *in casu* are truth and public interest as well as privilege (relative). None of the defences were dealt with by the judge in the court *a quo*, specifically the defence of privilege (which is relevant *in casu*) was clearly not dealt with in the court. Privilege exists where someone has a right, duty or interest to make specific defamatory assertions and the people to whom the assertions are published have a right or duty to learn of such assertions (Neethling & Potgieter 358). This will then allow a person to injure another's good name and, in so doing, his conduct will not be regarded as wrongful. However, if the plaintiff proves that the defendant exceeded the bounds of this privileged occasion, then this protection will fall away (Neethling & Potgieter 358). Neethling and Potgieter distinguish between absolute and relative privilege (see Neethling & Potgieter 358). The defendants' communication is generally privileged. Absolute privilege means that a person making the statement has an absolute right to make that statement at that time, even if it is defamatory. In other words, the person making the defamatory statements is immune from liability for defamation. For example, it exempts persons from liability for potentially defamatory statements made during judicial or parliamentary proceedings. Relative privilege means that a defendant making the allegedly defamatory statement may have had some right to make the statement. If relative privilege applies to a statement it means that the plaintiff must prove that the defendant exceeded the bounds of privileged occasion (Neethling & Potgieter 358).

Having regard to the relationship between the parties, it could be argued that in the court *a quo*, the defendants (Sher and Spencer) could have relied on the defence of relative privilege. A relationship existed between the parties at that time. Sher and Spencer, as members of the Stella Club, wrote the letter on behalf of its club members with regard to the alleged misconduct of Vermaak. The defence is available if the defamatory words were published in the discharge of a duty or exercise of a right to a person who had a duty or right to receive the statement (*Mkhonza v Minister of Police* (16629/12) [2015] ZAGPPHC 266 (8 May 2015)). Due to the relationship that existed between the parties *in casu* and if it is proven that both parties had a corresponding duty or interest (that a privileged occasion existed), the defendant must further prove that he acted within the scope and limits of the privilege. The defendants would have had to prove that the defamatory assertions were related to the discharge of their duties or the furtherance of the interests of the Club. However, the plaintiff may still show that the defendants exceeded

the boundaries of privilege because they acted with malice. In *Kennel Union of South Africa and Others v Park* (1981 1 SA 714 (C)), it was held that the defendants cannot shelter behind the privilege unless it is shown that the report was a truthful, accurate and honest report, published *bona fide* without malice.

The *prima facie* wrongfulness of the defendant's conduct will also be cancelled if he proves that the defamatory remarks were *true* and in the *public interest* (see Neethling & Potgieter 360). Sher and Spencer raised this defence by stating that the statements made by them were true and in the interest of the members of their club (i.e. public interest) (par 5). Therefore, if the defendants in a defamation matter can prove that the statements made were true and in the public interest, then they can escape liability (see Neethling & Potgieter 357).

Every element of a delict must be proven in order to succeed with a delictual action. The elements of a delict are the following: an act, wrongfulness, fault (either intent or negligence), causation and damages (Neethling *et al* 4). With that being said, in order to prove defamation, every requirement of defamation must also be proven in order to succeed with a claim for defamation (Neethling & Potgieter 352).

The second element to prove defamation is intent or *animus iniuriandi*, which means that '[a]n accountable person acts intentionally if his will is directed at a result which he causes while conscious of the wrongfulness of his conduct' (Neethling *et al* 132). If there is no direction of the will or conscious wrongfulness, then there cannot be intent (Neethling *et al* 132). The intentions of Sher and Spencer were directed towards reprimanding Vermaak for his unscrupulous behaviour rather than defaming him (par 3). Vermaak's disciplinary hearing came about through various complaints received from other members of the club and the public alike (par 3).

2 4 Judgment of the Appeal Court

The matter was then appealed to the Kwazulu-Natal High Court Division in Pietermaritzburg. The judgment of the appeal court was based solely on whether the statements made by Sher and Spencer were in fact defamatory or not (par 1). With this being said, the judge in the appeal court was restrained to deal only with the facts that the judge in the court *a quo* dealt with. The facts were directly linked to whether or not the statements made by Sher and Spencer actually amounted to defamation according to the legal definition.

The two statements which were of main concern, and which were found to be defamatory by the court *a quo*, were thus also the main issues at hand in the court of appeal (par 7). Firstly, the statement regarding the poaching of members reads as follows: 'Consequently he has poached and canvassed a number of our members to join him. They obviously enjoyed his training and joined him. They are entitled to choose a club of their choice' (par 4(d)).

The court dealt with this issue by stating that '[Vermaak] failed to prove that in this case the statement was defamatory' (par 27). The second statement of concern was with regards to the 'arrogance' issue and reads as follows: 'William never accepted the disciplinary hearing nor did he accept those hearing it. He was arrogant to the point in telling us that our Constitution is old, invalid and superceded by the National Constitution' (par 4(b)).

The appeal court judgment stated that, when one is dealing with 'defamatory statements', the statement complained of should be seen as defamatory to the reasonable reader and if it is objectively scrutinised, then one would find it to be defamatory (par 26). *In casu*, it would appear that the statement complained of was not that the respondent is an 'arrogant person', but rather that the respondent had acted and behaved in an 'arrogant fashion' at the disciplinary enquiry (par 26). Ploos van Amstel J was not convinced that a reasonable reader would find this statement to be defamatory, if objectively scrutinised (par 26). He could not find that the statement complained of would 'injure the good esteem in which the respondent was held by the reasonable reader' (par 27).

The judge looked at the wrongfulness element (parr 26 & 27) and came to the conclusion that the objective test for wrongfulness had not been proven (par 27). The fact that the first element of defamation, namely wrongfulness, could not be proven is sufficient basis to conclude that the statements concerned could not amount to defamation.

The appeal court specifically considered these two statements and held that the court *a quo* had erred in holding that these two statements were defamatory, and the appeal was thus successful (parr 28 & 29).

3 Relevant Case Law

3 1 *Kennel Union of Southern Africa and Others v Park* 1981 1 SA 714 (C)

Mr Park, the respondent in the Constitutional Court and plaintiff in the court below (the Magistrate's Court, Cape Town) is married to Susanna Magdalena Park who is a breeder of dogs in Salisbury, Rhodesia. 'Both the Parks are members of the Kennel Union of Southern Africa. This is a voluntary association comprising a large number of affiliated clubs and members who are natural persons controlled by a Federal Council consisting of 12 members from 12 centres' (*Kennel Union of Southern Africa and Others v Park supra* at 716D). The Federal Council has certain disciplinary powers over members (art 33 of the Kennel Union Constitution read with the disciplinary rules, schedule 1, made under arts 3 (5), (18) & (19)). Pursuant to powers similar to these in force after 1 September 1975 (when the present constitution came into force), the Kennel Union had, in 1973, suspended Mrs Park for four years from taking part in any of the affairs of the Union (716H). This meant, *inter alia*, that she was debarred from exhibiting dogs at shows – a serious

penalty for a breeder. Her suspension was to run from 18 October 1973 to 11 October 1977. During this time, Mr Park did a transfer of registration for a few of the dogs owned by Mrs Park so that these dogs could take part in certain exhibitions (716H).

One of the dogs taking part in an exhibition was still registered in his wife's name and therefore, the Union took disciplinary action against Mr Park and suspended him (717H). They further decided that any awards received from the show by Mr Park should be cancelled. A while after, it was then decided by the Union that this suspension be withdrawn. However, the suspension of Mr Park was already published in the Kennel Union Gazette (720D).

The action by Mr Park arose out of this publication by the first defendant in the Kennel Union Gazette, of which the second defendant was the editor and third defendant the printer, of a report that the plaintiff had been suspended until further notice in terms of certain rules of the first defendant (719A). These rules authorised suspension for conduct which was 'improper, disgraceful or discreditable... or prejudicial or injurious to the interests of canine affairs' (719D). The alleged conduct for which the first defendant had suspended the plaintiff was that he had entered a dog in a dog show and had signed the entry form as owner of the dog when, according to the first defendant's records, the dog was owned by his wife, who had some time previously been suspended by the first defendant. In fact, the plaintiff was the owner of the dog in question, he having purchased it from his wife, and the entry form which he had signed was regular in terms of first defendant's rules as the plaintiff had applied to the first defendant for the transfer of registration of ownership of the dog to his own name. It further appeared that the suspension followed a complaint by the secretary of the first defendant, but that no copy of the written complaint had been sent to the plaintiff as required by the first defendant's rules and, in breach of the first defendant's constitution, he had had no opportunity to answer the complaint or otherwise defend himself. The decision to suspend him was accordingly improperly reached and invalid. It was alleged that this publication was *animo iniuriandi* (720(G)), in consequence whereof the plaintiff suffered R750 as damages to his good name and reputation (720(G)).

In the alternative, Mr Park pleaded the following:

Alternatively, and only in the event of this Honourable Court's finding that the pleaded words of Defendants were not defamatory in their plain and ordinary meaning, plaintiff, pleads that the said words constitute an innuendo of dishonesty on Plaintiff's part, the words being intended to convey and in fact conveying to readers of the said Kennel Union Gazette that Plaintiff is a dishonest person and that he would and did dishonestly enter a dog in a show without being entitled to do so. The innuendo that Plaintiff was not the registered owner of the dog, Exhibit 318, as at 13th/14th March 1976 and had therefore dishonestly signed as owner of all three dogs is clear, was factually incorrect, and was published and printed with the intention of injuring

Plaintiff in his good name and reputation. As a result thereof Plaintiff suffered damages to his good name and reputation in the sum of R750,00 (720H).

As to the innuendo pleaded by the plaintiff, the defendants denied that the words were intended to convey or did convey to readers of the Gazette that the plaintiff was dishonest and had dishonestly entered a dog for a show without being entitled to do so (721H).

The parties then went on to deny the:

alleged innuendo that the plaintiff had been guilty of improper, disgraceful or discreditable conduct or conduct prejudicial or injurious to the interests of canine affairs or persons concerned or connected therewith; and denied that anyone understood the report in that way; and in the result denied that the plaintiff had suffered any damages at all (722D).

Nine months later, the defendants amended their plea by pleading privilege. They averred that the occasion of the publication was privileged because (722F):

- (i) The plaintiff was at all material times a member of the Kennel Union and as such was bound by the constitution; or alternatively was at all material times bound by the constitution.
- (ii) The defendants respectively publish, edit and print the Gazette which is the official organ of the Federal Council of the Kennel Union of Southern Africa.
- (iii) The Gazette is published only to members of the Union who are persons having an interest in the affairs of the Union and in affairs relating to dogs generally,
- (iv) In terms of Rule 14 in Schedule 1 to the Constitution the Council is empowered to publish in the Gazette full details of any complaint, the decision of the Disciplinary Committee and the decision of the Council thereon.
- (v) The defendants accordingly had a duty to publish the words concerning plaintiff which they did publish and the members of the Union had an interest in receiving such publication,
- (vi) The words about plaintiff accurately reflected the decision of the Federal Council.
- (viii) In publishing those words defendants acted without malice or impropriety and in the bona fide belief that the words were true (722F - 723B).

On these pleadings, the case went to trial and it was held by the court that based on the facts of the case it had not been ascertained that the alleged improper exhibition of the dog by Mr Park had not been adjudicated upon: when the report was published, the defendants had stated something which they had not known to be true, regardless of its truth or falsity, the inference of an improper motive arose and the defence of privilege was defeated (731A). The appeal was accordingly dismissed (733A).

The relevance of precedent in the law is that it partly constitutes the law as well as maintains consistency within our courts. The facts of the two cases are strikingly similar in that both cases dealt with independent

organisations where members have allegedly been defamed. The *Kennel Union* case would have served as direct precedent for the judge in the *Vermaak* case in the court *a quo*. Cases can be properly adjudicated upon if the judges properly relied on precedent when deciding on similar issues.

4 Analysis and Conclusion

Section 34 of the Constitution of the Republic of South Africa, 1996 provides as follows: 'Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum'. Allied to this, section 165(1) of the Constitution gives the courts the power to exercise judicial authority. Evidently these are extreme powers which must be exercised with caution, restraint and responsibility underpinned by accountability (Bosielo *Judgment Writing for Aspirant Judges* African Judicial Training Institute (2013) 3). In their judgments, judicial officers are obliged to furnish adequate reasons to explain how and why they arrived at certain decisions (Bosielo 3). Generally, every judgment amounts to storytelling with an introduction, body and conclusion (Bosielo 18). Every judgment must have (a) an introduction; (b) the facts; (c) the issues; (d) the law which governs the issues; (e) how to apply the law to the facts; (f) the remedy; and (g) the order (Bosielo 18).

It is submitted that the courts are not thoroughly focusing on or addressing all the relevant issues raised by a particular case. It is vital that the courts remain consistent in applying the basic legal principles in each case. In order to ensure consistency in our law, with specific reference to defamation, the courts must display a thorough analysis, understanding and application of the law to the facts. In so doing, the correct legal issues have to be identified. This is an essential stage of the process because if these issues are not properly identified or recognised, it will become impossible to apply the law to the facts which, inevitably, will result in various inconsistencies.

The legal principles relating to defamation are fairly consistent and have occasioned a great deal of assurance over time. As legal students are taught to unravel the facts of each case, identify the legal principles and to lastly apply these principles to the facts, this should also remain fairly consistent within our courts. Legal scholars soon realise that not all cases are clear cut and each scenario is different, which would require slightly different deliberations. Be that as it may, the law still remains constant and a correct application of the legal principles should result in fairly similar outcomes.

It is submitted that the elements of delict were not proven in the *Sher v Vermaak* matter. Upon using the ordinary meaning of the words as well as the objective and reasonable person test, it follows that the statements are not defamatory. The publication of the letter to members of the club

may have caused the plaintiff a bit of embarrassment or even real prejudice but it does not amount to defamation. It must be remembered that the consistency of court decisions is crucial for justice to be served. The legal principles are there to lead the courts in the correct direction and these legal principles should always be followed by the courts.

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